



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3554-99

21 October 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting a better characterization of service than the bad conduct discharge issued on 26 January 1993.

2. The Board, consisting of Mr. Swarens, Mr. Dunn and Mr. Flood, reviewed Petitioner's allegations of error and injustice on 13 October 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 14 December 1987 at age 19. He then served in an outstanding manner for about three years. This included being honorman of his recruit company, graduation as number one in his corpsman class and qualification as a Navy Seal team member. On 11 January 1991 he was suspended from his duties following an alcohol related incident. On 4 June 1991, he accidentally fired a pistol killing a shipmate. A general court-martial convened on 31 July 1991 and convicted him of involuntary manslaughter. The court sentenced him to reduction to pay grade E-1, forfeiture of all pay and allowances, confinement at hard labor for eight months and a bad conduct discharge. The bad conduct discharge was issued on 26 January

1993.

d. As part of the required review process before the issuance of a bad conduct discharge, Petitioner's case was considered by the Naval Clemency and Parole Board (NC&PB). The NC&PB stated, in its letter to Petitioner, in part, as follows:

... The Board particularly was concerned with the lack of judgment you exercised in light of your SEAL training and that this lack of judgment resulted in the death of a sailor.

The Board was impressed, however, with your previous outstanding military record. It also recognized the following factors involved in your case: (1) Your offense was committed while you were under the influence of alcohol. While alcohol consumption alone is not a sufficient basis for clemency, it does help explain your lack of judgment you exercised at the time in spite of your SEAL training and overall military experience. (2) You have accepted responsibility for and shown deep and sincere remorse over the death of BM3, the victim. (3) The victim was your best friend. (4) You had the respect of your superiors and peers. (5) But for this offense, you had the potential for an outstanding career in the U. S. Navy. (6) You have the potential to be a successful law-abiding citizen. Because of the seriousness of your offense and the relatively short period of time that has elapsed from your offense and the completion of your sentence imposed by court-martial, time is needed for you to contemplate your actions and the consequences faced by you and others as a result of those actions. Time will serve to increase your appreciation of the significant adverse consequences that can result from immaturity and bad judgment. Finally, it will service to impress upon you the importance of remembering "lessons learned."

The Board strongly believes that the exercise of bad judgment, hopefully due to immaturity, should not be the basis of punishment for a life-time. Therefore, although the Board was not convinced that clemency was deserved at this particular point in time, it was convinced that clemency might be appropriately granted in the future depending upon the maturity you achieve and the amends you make to society. Accordingly, the Board advises you that the Board for Correction of Naval Records (BCNR) is an agency within the Department of the Navy that may, in appropriate cases, grant

clemency in the form of an upgraded discharge upon application. The NC&PB recommends that five years after the execution of your discharge, as indicated upon receipt of your DD 214, you apply to BCNR for an upgrade to your bad conduct discharge. Should you present to that Board evidence, through documentation, that you have recognized and are dealing with your alcohol problem, leading an offense-free lifestyle, actively participating in community service, establishing a successful and stabilized employment or educational pursuits, and receiving the continued support of your community, the NC&PB would support and recommend at that time an appropriate upgrade of your discharge by the BCNR.

A copy of this letter is attached to enclosure (2).

e. Petitioner initially applied to the Board on 2 November 1998, however, it was not accepted for review until June 1999. With his application, Petitioner has submitted five character references attesting to his steady employment, participation in church activities and his good reputation in the community. Copies of the character references are attached to enclosure (2). The Federal Bureau of Investigation has reported that the only entry on his record, is the general court-martial conviction which resulted in his discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board carefully reviewed the letter from the NC&PB and the excellent character references submitted by Petitioner. The Board found that he had met the requirements suggested by the NC&PB and agrees that his discharge should now be recharacterized to general as a matter of clemency.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 26 January 1993 he was issued a general discharge by reason of misconduct vice the bad conduct discharge actually issued on that date.

b. That this Report of Proceedings be filed in Petitioner's naval record.

c. That the Department of Veterans Affairs be informed upon request that Petitioner's application was received by the Board on 9 November 1998.

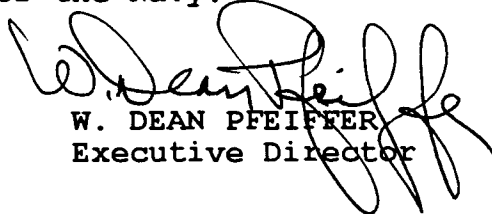
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director